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December 31, 1998

VIA FACSIMILE

Mr. Frank J. Biros
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Washington DC 20044-7611

Re: Albion-Sheridan Township Landfill Superfund Site
Our File: 71

Dear Mr. Biros:

Enclosed are Decker's comments to the draft Consent Decree. I have only included the pages with comments that differ from those submitted by the City. Decker concurs with the City's comments (and, consequently, won't repeat them), except to the extent they conflict with the enclosed. I regret that Decker's changes are not in "redline" format. Our secretaries (at least the ones not out with the holidays) are not familiar with Word and it was not possible to have the changes highlighted. I have tried to indicate where the changes were made on the enclosed pages. I hope I can answer any remaining questions during our conference call on Monday.

Very truly yours,

FINK ZAUSMER, P.C.

Michael L. Caldwell

Fink, Zausmer & Kaufman
A PROFESSIONAL CORPORATION

cc: Connie Puchalski
Charles Denton
Eugene Smary
Philip M. Moilanen

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to CERCLA Section 113, 42 U.S.C. § 9613, NREPA Section 20129(3), M.C.L. § 324.20129(3), and common law contribution. Cooper and Corning also seek a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., finding the City liable to Cooper and Corning for damages and response costs that have been or will be incurred at the Site. Cooper and Corning also filed a Third-Party Complaint against Decker alleging that Decker is liable pursuant to CERCLA Section 107, 42 U.S.C. § 9607, and NREPA Section 20126, M.C.L. § 324.20126, for past and future response costs incurred and to be incurred by Cooper and Corning at the Site. Additionally, Cooper and Corning seek contribution from Decker pursuant to CERCLA Section 113, 42 U.S.C. § 9613, NREPA Section 20129(3), M.C.L. § 324.20129(3), and common law contribution. Cooper and Corning also seek a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., finding Decker liable to Cooper and Corning for damages and response costs that have been or will be incurred at the Site.

E. Decker filed a Counterclaim and Cross-claim against Cooper/Corning and the City, respectively, seeking contribution pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), Section 29(3) of NREPA, M.C.L. 324.20129(3), as well as common law, toward the response costs Decker has incurred in connection with the Site. Decker also seeks a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., finding the City, Cooper, and Corning liable to Decker for damages and response costs that have been or will be incurred at the Site.

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F. The City, Cooper, Corning and Decker (collectively the "Settling Defendants") do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, and do not acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. *w/city changes*

D.K.

G. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Michigan (the "State") on June 6, 1995 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA provided the State with an opportunity to participate in such negotiations.

H. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of Interior on June 6, 1995 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship.

I. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 4, 1989, 54 Fed. Reg. 41000, 41021.

J. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced on January 30, 1992, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

K. EPA completed a Remedial Investigation ("RI")/Feasibility Study ("FS") Report in or about September 1994.

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L. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the F3 and of the proposed plan for remedial action on September 26, 1994, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

M. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on March 28, 1995, on which the State had a reasonable opportunity to review and comment and on which the State has given its concurrence. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

N. EPA issued the UAO, Docket No. V-W-96-C-316, to the City, Cooper, Corning and Decker on October 11, 1995. Pursuant to the UAO, Cooper and Corning completed a Remedial Design for the selected remedial action ("RA") at the Site, that was approved by EPA, in or about August 1997. Cooper and Corning completed an RA Work Plan, that has been approved by EPA on September 4, 1997. Decker, through its wholly owned subsidiary, CDC Associates, Inc. ("CDC"), has acquired certain properties adjacent to the Site in order to provide the access required to implement the RA.

O. Decker and EPA negotiated a separate Consent Decree, lodged with the Court on May 27, 1998 ("the Decker Consent Decree"). The City, Cooper and Corning have submitted timely objections to the Decker Consent Decree. This Consent Decree is intended to

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supersede the Decker Consent Decree. The United States shall move to withdraw the Decker Consent Decree at the same time it lodges this Consent Decree and such motion shall not be opposed by the City, Cooper or Corning. Upon entry of this Consent Decree, the Decker Consent Decree shall be null and void ab initio, and shall have no further force and effect.

Do we
need this?
Just supersede.

P. Cooper and Corning (the "Settling RA Defendants"), agree to perform the Remedial Action construction at the Site, pursuant to the EPA-approved RA Work Plan and Remedial Design, attached as Appendixes A and D, respectively, and incorporated herein by reference. The City and Decker (the "Settling O&M Defendants"), agree to assume responsibility for the Operation and Maintenance ("O&M") of the remedy at the Site, pursuant to the EPA-approved O&M Plan, attached as Appendix B, and incorporated herein by reference. Following entry of this Consent Decree by the Court, EPA agrees to withdraw the UAO, Docket No. V-W-96-C-316, issued on October 11, 1995 to the City, Cooper, Corning and Decker. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

Q. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action, including the Operation and Maintenance, selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

R. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree (but not each employee of such contractors) and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree.

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Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree.

With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Adjacent Parcels" shall mean the former "Gill" and "Prater" properties located adjacent to the Site purchased by Decker, through CDC, for implementation of the RA. The Adjacent Parcels are described in Appendix ____ (legal description).

Do we need this?

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any

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V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendants, to reimburse response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants

1. Cooper and Corning shall finance and perform the Remedial Action in accordance with this Consent Decree, the ROD, and the EPA-approved Remedial Design and RA Work Plan, and other plans, standards, specifications, and schedules set forth herein or developed by Cooper and Corning and approved by EPA pursuant to this Consent Decree. The City and Decker shall finance and perform the Operation and Maintenance in accordance with this Consent Decree, the ROD, the O&M Plan, and all plan amendments and other plans, standards, specifications, and schedules set forth herein or developed by the City and Decker and approved by EPA pursuant to this Consent Decree. The City and Decker shall also reimburse the United States for Past and Future Response Costs as provided in this Consent Decree.

2. The obligations of Cooper and Corning to finance and perform the Remedial Action under this Consent Decree are joint and several. In the event of the insolvency or other failure of either Cooper or Corning to implement the requirements of this Consent Decree, the remaining party shall complete all such requirements. The obligations of the City and Decker to finance and perform the Operation and Maintenance, and to pay Future Response Costs, under this Consent Decree are joint and several. In the event of the

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insolvency or other failure of either the City or Decker to implement the requirements of this Consent Decree, the remaining party shall complete all such requirements. The obligations of the City and Decker to pay Past Response Costs under this Consent Decree, however, are several, not joint and several.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the EPA-approved Remedial Design and RA Work Plan and O&M Plan. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the RA Work and O&M Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the RA Work or O&M Work). Where any portion of the RA Work and O&M Work that is not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the RA Work or O&M Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the RA Work or O&M Work.

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c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice to Successors-in-Title

a. At least 30 days prior to the conveyance of any interest in the Adjacent Parcels, including, but not limited to, fee interests and leasehold interests, to any grantee not affiliated with Decker, Decker shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). At least 15 days prior to such conveyance, Decker shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

with notice to the Adjacent Parcels
b. In the event of any such conveyance, Decker's obligations under this Consent Decree, including, but not limited to, its obligation to provide ~~or ensure~~ access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by Decker.

In no event shall the conveyance release or otherwise affect the liability of Decker to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

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self for work
and CDC

c. Decker agrees to permit Cooper and Corning to use soil fill material from the Adjacent Parcels, provided that Cooper and Corning take the necessary actions to eliminate any unsafe conditions or drainage problems caused by their use of such soil fill material prior to completion of the RA Work. Cooper and Corning shall name Decker as additional insured on any general liability insurance policies written with respect to implementation of the RA on the Adjacent Parcels. Additionally, the site security Cooper and Corning install as part of the RA Work shall encompass the Adjacent Parcels. *O.K.*

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

10. Selection of Supervising Contractor.

a. All aspects of the RA Work to be performed by Cooper and Corning and O&M Work to be performed by the City and Decker, pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of Supervising Contractors that have been selected by the respective Settling Defendants. Based on information provided by Settling RA Defendants, EPA has issued an authorization to proceed for the RA Supervising Contractor selected. Within 10 days after lodging of this Consent Decree, Settling O&M Defendants shall notify EPA in writing of the name, title and qualifications of any contractor proposed to be their O&M Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

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a. If EPA discovers new information (as defined in paragraph ~~(old #84)~~) after the date of execution of this Consent Decree and, based upon such discovery, determines that modification to the work specified in the O&M Plan is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the O&M Plan. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. If the City and Decker object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 67 (record review). The O&M Plan shall be modified in accordance with final resolution of the dispute.

c. The City and Decker shall implement any work required by any modifications incorporated in the O&M Plan in accordance with this Paragraph.

d. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

19. The City and Decker shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA project coordinator of such shipment of Waste Material. However, the notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

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(8) Assessing Settling Defendants' compliance with this Consent Decree; and

(9) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to, (i) permitting control of access to the Site and the Adjacent Parcels by means of a fence to be installed by RA Settling Defendants as part of the RA Work; (ii) permitting implementation of a maintenance program for the landfill cap including protection of vegetative layer and periodic inspection; (iii) restrictions on future development of the Site; (iv) restrictions on construction of water wells; and (v) advisories to all property owners. (?)

no fence in delete?

c. Within 30 days of entry of this Consent Decree, execute and record in the Recorder's Office of Calhoun County, State of Michigan, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 28.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 28.b of this Consent Decree, and as provided in Appendix F of this Consent Decree, to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to the following persons, (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives. Within 30 days of recording the easement, such Settling Defendants shall

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next six weeks. Settling RA Defendants shall submit these progress reports to EPA, the O&M Settling Defendants, and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling RA Defendants pursuant to Paragraph 50.b of Section XIV (Certification of Completion). *Deletion* If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

34. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

35. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 5, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

36. Within 20 days of the onset of such an event, Settling Defendants shall furnish to Plaintiff a written report, signed by the appropriate Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

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the Operation and Maintenance or any portion thereof has not been completed in accordance with this Consent Decree, EPA will notify Settling O&M Defendants in writing of the activities that must be undertaken by Settling O&M Defendants pursuant to this Consent Decree to complete the Operation and Maintenance. Provided, however, that EPA may only require Settling O&M Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the O&M Plan and the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 13.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the O&M Plan or require the Settling O&M Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling O&M Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Operation and Maintenance has been performed in accordance with this Consent Decree, EPA will so certify in writing to Settling O&M Defendants. This certification shall constitute the Certification of Completion of the Operation and Maintenance for purposes of this Consent Decree. ^{Deletion} Certification of Completion of the Operation and Maintenance shall not affect Settling O&M Defendants' other obligations under this Consent Decree, if any.

XV. EMERGENCY RESPONSE

52. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an

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Decree in reimbursement of Past Response Costs. Interest on the unpaid balance shall begin to accrue from the date of entry of this Consent Decree. Each annual payment shall be made by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number _____, the EPA Region and Site/Spill ID # 05-AN, and DOJ case number 90-11-2-1109. Payments shall be made in accordance with instructions provided to the City by the Financial Litigation Unit of the United States Attorney's Office for the District of Michigan following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. The City shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and to:

Chief, Superfund Accounting
Chief, Multi-Media Enforcement Branch I
Office of Regional Counsel
U.S. EPA
77 West Jackson Boulevard

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~~5~~. Within ^{thirty (30)}~~sixty (60)~~ days of entry of this Consent Decree, Decker shall pay to the EPA Hazardous Substance Superfund, \$250,000 by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number _____, the EPA Region and Site/Spill ID # 05-AN, and DOJ case number 90-11-2-1109. The payment shall be made in accordance with instructions provided to Decker by the Financial Litigation Unit of the United States Attorney's Office for the District of Michigan following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be

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credited on the next business day. Decker shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and to:

Chief, Superfund Accounting
Chief, Multi-Media Enforcement Branch I
Office of Regional Counsel
U.S. EPA
77 West Jackson Boulevard

55. Within 60 days of the effective date of this Consent Decree, Settling O&M Defendants shall pay to the EPA Hazardous Substance Superfund the amount of \$200,000 for Future Response Costs. This entire amount shall be deposited in the Albion-Sheridan Township Landfill Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to reimburse EPA for future response costs at the Site. The Settling O&M Defendants shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund-- Albion-Sheridan Township Landfill Superfund Site Special Account" and referencing the EPA Region and Site/Spill ID # 05-AN, and DOJ case number 90-11-2-1109, and the name and address of the party making payment. The Settling Defendants shall send the check to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673 and shall send copies of the check to the United States as specified in Section XXVII (Notices and Submissions) and Paragraph 54 of this Consent Decree.

56. In the event that the payments required by Paragraph 55 are not made within 60 days of the effective date of this Consent Decree, Settling O&M Defendants shall pay Interest on the unpaid balance. The Interest shall accrue through the date of the Settling O&M Defendants' payment. Payments of Interest made under this Section shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling O&M Defendants' failure to make timely payments under this Section.

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unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

66. a. In the event that the parties cannot resolve a dispute by Informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 67 or Paragraph 68.

b. Within thirty(30) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 67 or 68. Within ten (10) days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 67 or 68, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 67 and 68.

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\$4,000	15th through 30th day
\$8,000	31st day and beyond

b. Compliance Milestones.

(1) Failure to adequately or timely complete the following submissions/activities set forth in the RA Work Plan shall subject Settling RA Defendants to the stipulated penalties established in Subparagraph a.:

Begin physical on-Site construction of the landfill cap by April 1, 1999.

Complete physical on-Site construction of the landfill cap (including seeding with native vegetation) by September 1, 1999.

Complete installation of a permanent fence around the Site and the Adjacent Parcels within 30 days of the landfill cap completion. OK

Record access and deed restrictions on all property as described in the ROD within 30 days of entry of this Consent Decree.

Remove debris from the Site, including but not limited to debris in the northeast corner of the Site, by May 7, 1999.

Submit to EPA signed access agreements for all property where access is needed by February 1, 1999.

Complete all other RA Work tasks by the dates required in the construction schedule in Appendix G.

(2) Failure to adequately or timely complete the following submissions/ activities set forth in the O&M Plan shall subject Settling O&M Defendants to the stipulated penalties established in Subparagraph a.:

Initiate O&M as provided in the O&M Plan schedule.

Initiate quarterly groundwater and drinking water monitoring by August 15, 1999.

Complete quarterly groundwater and drinking water monitoring as provided in the O&M Plan schedule.

Initiate annual groundwater monitoring as provided in the O&M Plan schedule.

Complete annual groundwater monitoring as provided in the O&M Plan schedule.

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Initiate five-year review groundwater monitoring as provided in the O&M Plan schedule.

Complete five-year review groundwater monitoring as provided in the O&M Plan schedule.

Complete O&M as provided in the O&M Plan schedule.

Payment of any installment payment by the City as required by this Consent Decree (except that Decker shall not be assessed any penalty based on the City's failure to make any such installment payment).

Implementation of the access and institutional controls by Decker, on the Adjacent Parcels, as provided in Paragraph 28 of this Consent Decree.

72. The following stipulated penalties shall accrue per violation per day for failure of Settling RA Defendants and Settling O&M Defendants to submit timely or adequate reports or other written documents pursuant to the RA Work Plan and O&M Plan, respectively, and this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$1,000	15th through 30th day
\$2,000	31st day and beyond

73. In the event that EPA assumes performance of a portion or all of the RA Work pursuant to Paragraph 90 of Section XXI (Covenants Not to Sue by Plaintiff), Settling RA Defendants shall be liable for a stipulated penalty in the amount of \$2.6 million. In the event that EPA assumes performance of a portion or all of the O&M Work pursuant to Paragraph 90 of Section XXI (Covenants Not to Sue by Plaintiff), Settling O&M Defendants shall be liable for a stipulated penalty in the amount of \$0.589 million.

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every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

79. a. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 76.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

80. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFF

81. In consideration of the actions that will be performed and the payments that will be made by the Settling O&M Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 82, 83, and 89 of this Section, the United States covenants not to sue or to take administrative action against Settling O&M Defendants and/or,

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O.K.

to the extent the following acted or act within the scope of their employment or authority, their respective agents, officers, officials directors, employees, and their respective successors or assigns, pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site. Except with respect to future liability of the City, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraphs 54 and 55 of Section XVI (Reimbursement of Response Costs). Except with respect to future liability of Decker, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 55 of Section XVI (Reimbursement of Response Costs). With respect to future liability of the Settling O&M Defendants, these covenants not to sue shall take effect upon Certification of Completion of Operation and Maintenance by EPA pursuant to Paragraph 51.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling O&M Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling O&M Defendants and do not extend to any other person.

82. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling O&M Defendants

- a. to perform further response actions relating to the Site or
- b. to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Operation and Maintenance: O.K.
 - (1) conditions at the Site, previously unknown to EPA, are discovered,
 - or

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- (2) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that the Operation and Maintenance is not protective of human health or the environment. *OK*

83. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling O&M Defendants

- a. to perform further response actions relating to the Site or
- b. to reimburse the United States for additional costs of response if,

subsequent to Certification of Completion of the Operation and Maintenance:

- (1) conditions at the Site, previously unknown to EPA, are discovered, or
- (2) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this Information together with other relevant information indicate that the Operation and Maintenance is not protective of human health or the environment.

No. Does not make sense

84. For purposes of Paragraphs (old 48) and 82, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 83, the

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sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto, except as provided in Paragraph 95.

97. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants and, to the extent the following acted or act within the scope of their employment or authority, their respective agents, officers, officials directors, employees, and their respective successors or assigns, are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree.

98. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree (other than counterclaims and crossclaims brought by Settling Defendants in an action initiated by others), they will notify the United States in writing no later than 45 days prior to the initiation of such suit or claim.

99. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 15 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 15 days of service or receipt of any Motion for Summary Judgment and within 15 days of receipt of any order from a court setting a case for trial.

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113. a. Except as provided in Paragraph 13 ("Modification of the RA Work Plan or related Work Plans"), no material modifications shall be made to the RA Work Plan without written notification to and written approval of the United States, Settling RA Defendants, O&M Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State and O&M Settling Defendants with a reasonable opportunity to review and comment on the proposed modification. Modifications to the RA Work Plan that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling RA Defendants. NO

b. Except as provided in Paragraph 18 ("Modification of the O&M Plan or Related Plans"), no material modifications shall be made to the O&M Plan without written notification to and written approval of the United States, Settling O&M Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the O&M Plan that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling O&M Defendants.

114. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

115. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right

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